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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,063

12/16/2003

Robert P. Muszkiewicz

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1868

7590

08/23/2006

Larry G. Brown
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EXAMINER

FIGUEROA, MARISOL

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,063

Applicant(s)

MUSZKIEWICZ, ROBERT P.

Examiner

Marisol Figueroa

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 17-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 and 17-22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment filed on 6/21/2006. The applicant amended claims 1 and 17, and canceled claims 11-16. Accordingly, claims 1-10, and 17-22 are currently pending in the present application.

Response to Arguments

2. Applicant's arguments with respect to claims 1 and 17 have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, this action is made FINAL.

Examiner Remarks

4. For purposes of examination the "surveillance mode" is being interpreted as any mode that changes an operational state of the mobile communication device, such as: silent mode, meeting mode, vibration mode, mute mode, night mode, inaudible alert mode, cellular or PHS mode, etc., meeting the limitations claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. **Claims 1, 8, and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over TANAKA et al. (JP 09-191491) in view of McDERMOTT (US 4,947,291). Refer to electronic translation for Japanese reference.

Regarding claim 1, Tanaka discloses a method for placing a radio communication device having a display that includes a first backlight (abstract; e.g. green backlight) and a red backlight in a surveillance mode (abstract; red backlight in cellular mode) comprising the steps of:

determining if the surveillance mode has been selected; and switching the display so that it uses the red backlight instead of the first backlight if the surveillance mode has been selected (abstract, lines 5-15; an entered code is compared with a registered code and when coincident the display color of a back light is selected in red color when the cellular mode is selected).

Tanaka doesn't expressly disclose wherein the surveillance mode (which uses a red backlight) is selected based on a user's desire to minimize the user's chances of being detected.

However, the user's desire of operating the device does not differentiate the claim from the prior art. McDermott teaches that the military has employed red light for instances when blackout security was required, which required personnel to substantially reduce their detectability while still permitting to carry out their assigned tasks (col. 1, lines 14-21).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention, to recognize that the user selecting the surveillance mode of operation, which switches the display to a red backlight, would minimize the user's chances of being detected, as suggested by McDermott, since it is well known in the art that red light has been employed in the military to reduce the detectability of the personnel while still permitting them to carry out their tasks.

Regarding claim 8, the combination of Tanaka and McDermott disclose a radio communication device as defined in claim 1, wherein the radio communication device comprises a two-way radio communication device (p.0001; it is known in the art that a cellular telephone is a two-way radio communication device).

Regarding claim 9, the combination of Tanaka and McDermott disclose a method as defined in claim 1, wherein the radio communication device comprises a cellular telephone (p.0001).

7. **Claims 2-4 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over TANAKA et al. in view of McDERMOTT, and further in view of CARLEY et al. (US 2003/0109288 A1).

Regarding claims 2 and 4, the combination of Tanaka and McDermott disclose a method as defined in claim 1, Tanaka discloses wherein the radio communication device has a speaker (p.0006, lines 6-8; the portable telephone system includes a loud speaker 8 to output voice) that can be adjusted to different volume levels (it is inherent that the loudspeaker volume can be adjusted).

Tanaka doesn't expressly disclose wherein the method further comprises the step of: automatically adjusting the volume level of the speaker to a predetermined level if the surveillance mode has been selected, and wherein the speaker is automatically muted if the surveillance mode is selected. Carley teaches a personal communication device PCD (figure 1) comprising a selector 106 for selecting different alert modes such as "silent alert mode", "audible alert mode", "inaudible alert mode", etc (p.0002, lines 9-15; p.0010, lines 1-6). Furthermore, teaches that the PCD can be set to an inaudible alert mode in where an incoming call is alerted by a vibrating element and/or LED, therefore the volume of the ringer is muted, e.g. zero volume (p.0011).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Tanaka's either mode (e.g. Cellular/PHS mode) with an "inaudible alert mode"

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of operation for not disturbing other people when receiving a call in a noise restricted location or at night when people might be sleeping, and changing the display color will provide the advantage of easily discriminating which mode of operation is selected by having only to view a color in the backlight.

Regarding claim 3, the combination of Tanaka, McDermott, and Carley disclose a method as defined in claim 2, Tanaka discloses wherein the surveillance mode (e.g. cellular mode/inaudible alert mode) is selected by activating a key located on the radio communication device (p.0010, lines 6; p.0011, lines 9-11; selector 106 for selecting an alert mode). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to select the surveillance mode by activating a key located on the radio communication device as suggested by Carley, because it facilitates the switching of modes by manual input from the user.

Regarding claim 7, the combination of Tanaka, McDermott, and Carley disclose a method as defined in claim 4, Carley discloses wherein all audible alerts previously provided for incoming calls or messages are muted if the surveillance mode (e.g. cellular mode/inaudible alert mode) has been selected (p.0002, lines 18-21; p.0011, lines 5-9; in the inaudible alert mode the personal communication device does not generate any audible alert in response to a call). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to mute all the audible alerts in an inaudible alert mode (i.e. surveillance mode) as suggested by Carley, in order for not disturbing other people when receiving a call in a noise restricted location or at night when people might be sleeping.

8. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over TANAKA et al. in views of McDERMOTT and CARLEY et al., and further in view of HAMADA et al. (US 2003/0147113 A1).

Regarding claim 5, the combination of Tanaka, McDermott, and Carley disclose a method as defined in claim 2, Carley discloses wherein if the surveillance mode (e.g. cellular mode/inaudible alert mode) has been selected any alerts for incoming calls or messages are provided by a light (p.0011; in the inaudible alert state or mode the incoming calls or messages are alerted by and LED, i.e. light). Therefore, it would to one having ordinary skill in the art at the time of the invention to provide a light for alerting of incoming calls or messages as suggested by Carley, because provides a visual alert that makes aware a user of an incoming call or message.

However, Carley doesn't expressly disclose wherein the light is a red light. Hamada teaches a communication apparatus that notifies a user of an incoming call by a light-emitting unit (e.g. LED) flashing a red light (p.0008). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to provide a red light for notifying the event of an incoming call as suggested by Hamada, because a red light gives a sense of urgency or importance to an occurring event such as an "incoming call".

9. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over TANAKA et al. in views of McDERMOTT, and CARLEY et al., and further in view of OSANN (US 2003/0153364 A1).

Regarding claim 6, the combination of Tanaka, McDermott, and CARLEY disclose a method as defined in claim 2, but doesn't expressly disclose wherein if the surveillance mode has been selected any alerts for incoming calls or messages are provided by an icon displayed on the display. Osann teaches that an icon flashing on the phone's display may be used in addition to an audible ring mode or vibration mode of the mobile's phone, furthermore the mobile phone can be completely in a silent mode and the flashing icon of the phone's display takes over on the task of signaling an incoming call (p.0024, lines 1-10; p.0059, lines 1-8). Therefore, it would have been

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obvious to one having ordinary skill in the art at the time of the invention, to provide any alerts for incoming calls or messages by an icon displayed of the display when the surveillance mode (e.g. inaudible alert mode, vibration mode, etc.) is selected as suggested by Osann, in order to notify the user of an incoming call when audible alerts are off.

10. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over TANAKA et al. in views of McDERMOTT, and CARLEY et al., and further in view TAKATORI (US 2002/0142754 A1).

Regarding claim 10, the combination of Tanaka, McDermott, and Carley disclose a method as defined in claim 3, but doesn't expressly disclose wherein once in the surveillance mode, activating the key again causes the radio communication device to automatically switch the display so that the first backlight is used and the volume level of the speaker is returned to the same level it was set at prior to the surveillance mode being entered. Takatori disclose a mobile communication apparatus that can be set to two modes of operation "transmission prohibition mode" and a "transmission enable mode", the user sets the "transmission prohibition mode" by depressing a "prohibit" button and once in the "transmission prohibition mode" the user can release the "transmission prohibition mode" by depressing the button again and restores the mobile communication apparatus to the normal state of operation: "transmission enable mode". Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, for the mobile communication apparatus to return to its normal operation when activating the switching mode key again as suggested by Takatori, in order to simplify the reestablishment of the normal operations of the mobile communication device by the user.

11. **Claims 17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over CARLEY et al. in views of TANAKA, and McDERMOTT.

Regarding claim 17, Carley discloses a method for placing a radio communication device in a surveillance mode, comprising the steps of:

determining if the surveillance mode has been selected; adjusting the audio level to a predetermined state of operation if the surveillance mode has been selected (p.0010, lines 1-10; 14-20; p.0011; the personal communications device can be set to an “inaudible alert mode” by means of a selector 106 provided on the portable communications device wherein the ringer volume is off and a vibrating element and/or LED annunciates to the user of the incoming of a call or message).

However, Carley doesn’t expressly disclose wherein one or more light emitting sources found on the radio communication device are adjusted to predetermined states of operation if the surveillance mode has been selected.

Tanaka teaches a portable telephone that changes a display color of a backlight (e.g. green or red) according to a selected mode of operation of the portable telephone (e.g. Cellular or PHS mode) to easily discriminate which mode is selected by having only to view a color of the backlight (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the “inaudible alert mode” of Carley and adjust one or more light emitting elements to predetermined states of operations when the surveillance mode has been selected as suggested by Tanaka, in order to discriminate the operation mode of the radio communication device by only viewing the color of the backlight.

The combination of Carley and Tanaka doesn’t expressly disclose wherein the surveillance mode is selected based on a user’s desire to minimize the user’s chances of being detected.

However, the user’s desire of operating the device does not differentiate the claim from the prior art. McDermott teaches that the military has employed red light for instances when blackout

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security was required, which required personnel to substantially reduce their detectability while still permitting to carry out their assigned tasks (col. 1, lines 14-21).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention, to recognize that the user selecting the surveillance mode of operation, which changes the predetermined states of the one or more light emitting sources to for example a red color as suggested by Tanaka, would minimize the user's changes of being detected, as suggested by McDermott, since it is well known in the art that red light has been employed in the military to reduce the detectability of the personnel while still permitting them to carry out their tasks.

Regarding claim 18, the combination of Carley, Tanaka, and McDermott disclose a method as defined in claim 17, Carley discloses wherein the surveillance mode is selected by activating a surveillance mode key found in the radio communication device (p.0010, lines 1-6; p.0011, lines 9-11; the alert mode of the portable communications device is selected by a switch or selector 106 provided on the PCD).

Regarding claim 19, the combination of Carley, Tanaka, and McDermott disclose a method as defined in claim 17, Tanaka discloses wherein one of the light emitting sources on the radio communication device includes a display having a backlight and when the surveillance mode is selected, the display is backlit with a red light (abstract; the display color of a backlight of the display section is selected in red when the cellular mode is selected). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to change the color of the backlight of the when the surveillance mode is selected as suggested by Tanaka, in order to easily discriminate the mode of operation of the radio communication device by only viewing the color of the display.

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12. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over CARLEY et al. in views of TANAKA, and McDERMOTT, and further in view of TAKATORI.

Regarding claim 20, the combination of Carley, Tanaka, and McDERMOTT disclose a method as defined in claim 19, but doesn't expressly disclose wherein the red light found on the display can be adjusted to different light intensity levels and when the surveillance mode is selected, the red light is adjusted to a low light intensity level.

Takatori teaches mobile communication apparatus that can be set to a "transmission prohibition mode" and a "transmission enable mode", and includes a display sections 2a and 2b to indicate the modes of operation of the mobile communication apparatus, for example when the mobile communication apparatus is in a "transmission prohibition mode" displays a high intensity light, the contrary occur with the "transmission enable mode" (abstract; p.0038-0039; p.0042). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to adjust the display to different intensity levels as suggested by Takatori, in order to easily visually recognize the condition or mode in which the mobile communication device is operating.

13. **Claims 21-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over CARLEY et al. in views of TANAKA, and McDERMOTT, and further in view of TANABE (US 6,829,494 B2).

Regarding claims 21-22, the combination of Carley, Tanaka, and McDermott disclose a method as defined in claim 17, but doesn't expressly disclose wherein one of the one or more light emitting sources comprises a backlight on a display located on the radio communication device and when the surveillance mode is selected, the backlight is turned off, and wherein the one or more light emitting sources are disabled when the surveillance mode is selected. Tanabe teaches a radio communication terminal in which a user can select a mode of operation by a key input section; the microprocessor turns on or off the backlight of the communication terminal according to the

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determined mode, therefore when turning the backlight off the service life of the battery is prolonged (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, for selecting a mode that turn off the backlight of the display as suggested by Tanabe, in order to prolong the battery life of the communication device during the selected mode.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marisol Figueroa whose telephone number is (571) 272-7840. The examiner can normally be reached on Monday Thru Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester G. Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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